



## Office of Special Counsel

Patrick J. Fitzgerald  
Special Counsel

**Chicago Office:** Dirksen Federal Building  
219 South Dearborn Street, Fifth Floor  
Chicago, Illinois 60604  
(312) 353-5300

**Washington Office:** Bond Building  
1400 New York Avenue, Ninth Floor  
Washington, DC NW 20530  
(202) 514-1187

*Please address all correspondence to the Washington Office*

Via Telefax & Mail

October 28, 2005

The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
Congress of the United States  
Washington, DC 20515

The Honorable Jane Harman  
Ranking Member  
Permanent Select Committee on Intelligence  
Congress of the United States  
Washington, DC 20515

The Honorable Tom Lantos  
Ranking Member  
Committee on International Relations  
Congress of the United States  
Washington, DC 20515

The Honorable Rush Holt  
Ranking Member  
Subcommittee on Intelligence Policy  
Congress of the United States  
Washington, DC 20515

Dear Representatives Conyers, Harman, Lantos & Holt:

This is in response to your letter of October 11, 2005, sent to me in my capacity as Special Counsel with responsibility for conducting an investigation pursuant to the grant of authority set forth in the letters to me from the Deputy Attorney General, dated December 30, 2003, and February 6, 2004. Your letter inquired whether, as Special Counsel, I will be issuing a public report detailing the conduct and results of the grand jury investigation I have conducted. As described below, in the absence of express legal authority allowing for a public report, Federal Rule of Criminal Procedure 6(e), which protects the secrecy of grand jury proceedings, prevents the issuance of a public report describing any matter occurring before the grand jury.

As you are no doubt aware, my appointment as Special Counsel was not pursuant to the Independent Counsel statute, which expired in 1999. Therefore, the provision that authorized the filing of final reports, 28 U.S.C. § 594(h), is inapplicable. As your letter notes, I was not appointed under 28 C.F.R. § 600.1 *et seq*, which governs the appointment of a Special Counsel from outside the Department of Justice in certain circumstances. The provision allowing public reports in those regulations, *see* 28 C.F.R. § 600.9, is inapplicable, and in any event does not allow release of information in violation of "applicable legal restrictions," including the rule of grand jury secrecy. Because I was appointed as Special Counsel during my service in the Department of Justice, I am bound by the requirements of grand jury secrecy in Federal Rule of Criminal Procedure 6(e) to the same extent as every other federal prosecutor. The terms of Rule 6(e) do not authorize public reports.

Representatives Conyers, Harman, Lantos & Holt  
October 28, 2005  
Page 2

I further note that the provision of federal law allowing "special grand juries" to issue reports that may be made public by the court is inapplicable to the Special Counsel investigation because the grand jury conducting the investigation is not a "special grand jury" as that term is defined in the relevant statute. *See* 18 U.S.C. § 3333.

For the foregoing reasons, it is my judgment that there is no legal authority to issue a public report in the Special Counsel matter, and I intend, as I must, to strictly abide by the terms of Rule 6(e), which sets forth the general rule of grand jury secrecy and applicable exceptions.

I note that you also requested a report to Congress so that Congress could exercise its oversight responsibilities in the area of national security, ensure that the investigation has been undertaken free of "partisan, political influence," and consider the adequacy of existing legal authorities. While I fully appreciate that Congress has certain oversight responsibilities, I am not permitted to disclose grand jury material except in strict compliance with the provisions of Rule 6(e). The Rule does not authorize such disclosures by prosecutors to Congress, much less to Congress for dissemination to the public. I further appreciate that this investigation and any prosecution that might result must be conducted free from any partisan, political influence. I can assure you that it has been so conducted to date and we will continue to conduct ourselves in that manner.

As for your request that I comment regarding my view of the need for any legislative action, I will refrain from commenting on, or suggesting, legislation in deference to the competence of the relevant components of the Department of Justice, which can better vet any proposed legislation for its impact on a broad variety of cases. Moreover, it would be inappropriate for us to comment more fully while matters resulting from our investigation remain open.

Sincerely,

PATRICK J. FITZGERALD  
Special Counsel

BY:



GARY S. SHAPIRO  
Deputy Special Counsel